# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

EBONY KEYS, LLC, a Washington Limited Liability Company,

Plaintiff,

v.

OUTLOUD ENTERTAINMENT GROUP, INC., a Washington corporation,

Defendant/
Third Party Plaintiff,

v.

GEORGE HASENOHRL and "JANE DOE" HASENOHRL, husband and wife' and IVORY KEYES, LLC, a Washington limited liability company,

Third Party Defendants.

GROUP 44, INC., a Washington corporation,

Appellant,

v.

EBONY KEYS, LLC,

Respondent.

OUTLOUD ENTERTAINMENT GROUP, INC.,

Intervenor Defendant.

No. 44985-4-II

UNPUBLISHED OPINION

LEE, J. — Group 44, Inc. appeals the trial court's order ruling that (1) Ebony Keys, LLC was not liable for unpaid rent after Ebony Keys assumed a lease from Group 44's previous tenant, and (2) Ebony Keys was not required to return certain personal property it removed when it vacated the premises. Group 44 argues that it is entitled to equitable reimbursement under the doctrine of quantum meruit and that the trial court erred by finding that Group 44 did not own the personal property that was removed from the premises. We hold that Group 44 fails to present an argument appropriate for our review of the personal property issue, and that Group 44 is entitled to relief under the doctrine of quantum meruit. Accordingly, we affirm the trial court's order that Ebony Keys was not required to return the personal property it removed when it vacated the premises or to reimburse Group 44 for its value, we reverse the trial court's order as to the amount of unpaid rent Ebony Keys owes to Group 44, and we remand to the trial court to make appropriate findings regarding the reasonable value for the use and occupancy of the property.

## FACTS

### A. LEASES

Group 44 owns commercial property on 6th Avenue in Tacoma. In February 2005, Group 44 leased the property to Outloud Entertainment Group, Inc. to operate a dueling piano bar called Chopstix. The 2005 lease included a term for base rent of $6,260 with an attached addendum requiring Outloud to pay a share of assessments[1] related to the property. In 2010, Outloud and Group 44 entered into a new lease with a monthly base rent of $7,187.50 and monthly assessment charges of $1,559.50.

[1] The assessments were for taxes, insurance and maintenance.

In 2011, Outloud entered into an agreement with Ebony Keys for the purchase of Chopstix. Prior to entering into the purchase and sale agreement, Outloud provided Ebony Keys with a copy of Outloud's 2005 lease on Group 44's 6th Avenue property (without the attached addendum referencing the monthly assessment charges), preliminary profit and loss statements, and tax returns. Outloud did not, however, provide Ebony Keys with a copy of Outloud's 2010 lease with Group 44.

The purchase and sale agreement required Group 44 to approve the assignment to Ebony Keys of "the lease" to Ebony Keys. To allow the sale to close, Group 44 approved the assignment of "the lease" to Ebony Keys.

In April 2011, Ebony Keys took possession of the property and began operating Chopstix. Ebony Keys paid Group 44 the monthly base rent of $7,187.50, but did not pay the monthly assessment charges. Three months after Ebony Keys took possession of the property, Group 44 notified Ebony Keys that it was underpaying the rent. At that point, it became apparent that Group 44 and Ebony Keys were relying on different leases. The parties attempted to negotiate a lease agreement, but they were unable to do so.

B. LAWSUITS

In October 2011, Group 44 filed an unlawful detainer action against Ebony Keys. When Ebony Keys informed Group 44 that it was filing its own action against Outloud, Group 44 agreed to dismiss the unlawful retainer action against Ebony Keys pending resolution of Ebony Keys's dispute with Outloud. Group 44 also agreed to maintain the status quo until the matter was resolved. This temporary agreement provided that Ebony Keys could maintain occupancy of Group 44's property as long as Ebony Keys continued to pay the base rent, that either party was

required to give 30 days' notice before terminating the tenancy, and that neither party waived any claims.

In January 2012, Ebony Keys sued Outloud for breach of contract, fraud, and misrepresentation.

In July 2012, Ebony Keys gave Group 44 notice of its intent to vacate the premises. When Ebony Keys left, it removed numerous pieces of personal property from the property.

In August 2012, Group 44 intervened in Ebony Key's suit against Outloud, seeking to recover the unpaid rent (the assessment charges) from Ebony Keys. Outloud failed to defend the suit, and a default judgment was entered against it.[2]

Ebony Keys and Group 44 proceeded to a bench trial on Group 44's claims to recover the full amount of rent due (base rent and assessment charges) under the terms of the 2010 lease with Outloud and for the return of the personal property removed from the premises. Group 44 presented testimony from Marc Drewry, a shareholder in Outloud. He testified that prior to executing the purchase and sale agreement, Drewry provided the broker with a preliminary profit and loss statement that included a yearly rent amount of approximately $104,000, which was approximately the yearly amount of base rent plus assessment charges due under the terms of Outloud's 2010 lease with Group 44. Group 44 also presented evidence that Ebony Keys's first rent payment, paid out of escrow, included the entire amount due (base rent and assessment charges) under the terms of the 2010 lease.

[2] From the record it appears that Outloud was insolvent.

George Hasenohrl, a partner in Ebony Keys, testified that he did not see a copy of the 2010 lease until several months after the purchase. Instead, he was provided only with a copy of the 2005 lease without addendums. He acknowledged receiving Outloud's preliminary profit and loss statement and admitted that he incorporated the yearly amount of rent from Outloud's preliminary profit and loss statement into the business plan he submitted with the application for a Small Business Administration loan. However, he further testified that he did not pay particular attention to the actual amount of rent listed because the numbers in the profit and loss statement were just preliminary estimates and becuase he had the actual copy of the lease. He also testified that at closing he did not pay attention to the amount of rent paid by the escrow company because he was primarily concerned with the total closing amount.

The trial court found that, although the escrow payment was for the full amount of rent due under the 2010 lease, Ebony Keys relied exclusively on the base amount of rent listed in the 2005 lease when completing the purchase for Chopstix. The trial court concluded that (1) there was no meeting of the minds between Ebony Keys and Group 44 regarding the terms of the lease and (2) Ebony Keys was not liable to Group 44 for any rent other than what Ebony Keys had already paid Group 44 under the temporary occupancy agreement entered into between Ebony Keys and Group 44 in order to preserve the status quo pending the outcome of litigation.

In a motion to reconsider, Group 44 specifically argued that Ebony Keys must have known the actual rent amount owed (which included base rent and assessment charges) because that amount was used in its business plan, and therefore, Group 44 should be permitted to recover the entire amount of rent. The trial court denied Group 44's motion for reconsideration. Group 44 appeals.

## ANALYSIS

Group 44 argues that the trial court erred by failing to award Group 44 the balance of the rent that would have been due under the 2010 lease because the doctrine of quantum meruit entitled Group 44 to recover the entire amount of rent due under the 2010 lease. Group 44 also argues that the erred by failing to order Ebony Keys to return the personal property that it removed from the premises. We agree that the doctrine of quantum meruit entitles Group 44 to relief, but remand to the trial court to determine the amount of reasonable compensation for Ebony Keys's use of the property. Because Group 44 has failed to present any argument or authority to support its assertion that it is entitled to the property Ebony Keys took from the property, we decline to address the issue.

### A. STANDARD OF REVIEW

When a party challenges a trial court's findings of fact and conclusions of law, we determine whether substantial evidence supports the findings of fact and whether the findings of fact support its legal conclusions. *Panorama Vill. Homeowners Ass'n v. Golden Rule Roofing, Inc.*, 102 Wn. App. 422, 425, 10 P.3d 417 (2000), *review denied*, 142 Wn.2d 1018 (2001). Substantial evidence is evidence sufficient to persuade a rational fair-minded person the premise is true. *Korst v. McMahon*, 136 Wn. App. 202, 206, 148 P.3d 1081 (2006) (citing *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003)). Under the substantial evidence standard, reasonable inferences are viewed in the light most favorable to the prevailing party. *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 788, 903 P.2d 986 (1995). We defer to the trial court on issues of conflicting evidence, witness credibility, and

persuasiveness of the evidence. *City of University Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001).

B. QUANTUM MERUIT AND CHALLENGED FINDINGS OF FACT

Group 44 asserts that it is entitled to relief under the doctrine of quantum meruit. To the extent that Group 44 challenges the trial court's finding of fact that Ebony Keys was not aware of the 2010 lease terms, we disagree because substantial evidence supports this finding. However, there is a contract implied in fact between Group 44 and Ebony Keys, and Group 44 is entitled to relief under the doctrine of quantum meruit. But, the trial court's order did not articulate under what basis it concluded that Group 44 was entitled to only the amount agreed to in the temporary occupancy agreement, or what evidence supports its conclusion. Therefore, we reverse the trial court's order as to the amount Group 44 is entitled to recover and remand to the trial court to determine the amount Group 44 is entitled to recover by determining the amount of reasonable compensation for Ebony Keys's use of the property.

1. Findings of fact

Group 44 argues that substantial evidence does not support the trial court's findings that Ebony Keys was not aware of the terms of the 2010 lease at the time it purchased Chopstix. Specifically, Group 44 argues that the evidence shows Ebony Keys was aware that the rent included assessment charges because it included in its business plan the yearly estimate for rent that included base rent and assessment charges, and Ebony Keys's first rent payment from escrow was for the complete amount. But evidence was also presented at trial that Ebony Keys used the figures from Outloud's preliminary profit and loss statement as estimates for its draft business plan, which was solely for the purpose of securing a loan, and that it paid attention only to the total

amount from the closing. Therefore, whether Ebony Keys was aware of the terms of the 2010 lease involved assessing witness credibility and weighing evidence, an issue solely within the province of the trial court. We hold that substantial evidence supports the trial court's finding that Ebony Keys was not aware of the 2010 lease or the specific terms of the 2010 lease requiring assessment payments in addition to the base rent for occupancy.

2. Quantum meruit

The trial court's finding of fact regarding Ebony Keys's knowledge of the specific terms under the 2010 lease is largely irrelevant to the issue of quantum meruit. Quantum meruit is a method of recovering under a contract implied in fact. *Young v. Young*, 164 Wn.2d 477, 485, 191 P.3d 1258 (2008). "[T]he elements of a contract implied in fact are (1) the defendant requests work, (2) the plaintiff expects payment for the work, and (3) the defendant knows or should know the plaintiff expects payment for the work." *Young*, 164 Wn.2d at 486. In the context here, there is no dispute that a contract implied in fact exists: Ebony Keys requested use of Group 44's premises and took possession; Group 44 expected payment for use of its premises; and Ebony Keys knew that Group 44 expected payment, especially as evidenced by the fact that Ebony Keys continued to pay Group 44 the base rent for occupancy. Instead, the dispute is whether the doctrine of quantum meruit entitles Group 44 to payment of the entire amount that would have been due under the terms of its 2010 lease with Outloud.

The purpose of the doctrine of quantum meruit is to allow a remedy regardless of the existence of a contract. *Heaton v. Imus*, 93 Wn.2d 249, 252, 608 P.2d 631 (1980). Quantum meruit allows for reasonable compensation to one party for the benefit received by the other party. *Heaton*, 93 Wn.2d at 252-53. Here, the benefit that Ebony Keys obtained was use and occupancy

of Group 44's property. Therefore, Group 44 is entitled to recover from Ebony Keys an amount that is reasonable compensation for the use and occupancy of the property.

The trial court concluded that Group 44 was not entitled to any more than the base rent Ebony Keys had already paid, but it did not make a finding that the amount of base rent was reasonable compensation for the use and occupancy of the property. Absent such a finding, the trial court's conclusion of law that Ebony Keys is not liable for any rent other the base rent amount that had already been paid is not supported by the findings of fact. Accordingly, we reverse the trial court's order as to the amount Ebony Keys owes Group 44 and remand to the trial court to determine the amount of reasonable compensation for Ebony Keys's use and occupancy of the property, to enter appropriate findings of fact about this amount, and to enter a new order for the amount that Ebony Keys owes Group 44.

C. PERSONAL PROPERTY

Group 44 also argues that the trial court improperly concluded that Ebony Keys did not have to return the personal property that it took when it vacated the premises. However, in its brief, Group 44 fails to provide any authority to support its contention that the trial court erred in rendering its decision. We do not consider issues that are unsupported by argument or citation to authority. RAP 10.3(a)(6). Moreover, "[w]here no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Here, even after Ebony Keys asked this court to refuse to entertain Group 44's argument for failure to provide citation to authority, Group 44 failed to present us with any authority

supporting its position. Accordingly, we decline to consider Group 44's argument regarding the personal property.

ATTORNEY FEES

Ebony Keys requests attorney fees under RAP 18.1. Ebony Keys relies on RCW 4.84.010(6) and RAP 14.2 as the basis for its claim for attorney fees, which allows a prevailing party to recover statutory attorney fees. However, because we reverse the trial court's order in part, Ebony Keys is not the substantially prevailing party and, therefore, is not entitled to an award of statutory fees under RCW 4.84.010(6) or RAP 14.2.

We affirm the trial court's order that Ebony Keys was not required to return the personal property or to reimburse Group 44 for its value. We reverse the trial court's order as to the amount of unpaid rent that Ebony Keys owes Group 44 and remand to the trial court to make appropriate findings on the amount of reasonable compensation due Group 44 for Ebony Keys's use and occupancy of the property and to enter a new order for Ebony Keys to pay Group 44 that amount.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate reports, but will be filed with public record in accordance with RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Hunt, J.

Bjorgen, A.C.J.